

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1851

Short Title: Legislative Campaigns Pilot. (Public)

Sponsors: Representatives Hackney, Howard, Ross (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Fisher, Harrison, Justice, Lucas, Martin, McLawhorn, Nye, Sauls, Sherrill, Steen, Alexander, Dickson, Glazier, Insko, Jeffus, Luebke, McGee, Underhill, and Weiss.

Referred to: Judiciary I.

May 10, 2006

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE CANDIDATES FOR
2 SELECTED LEGISLATIVE SEATS WITH THE OPTION OF FINANCING
3 THEIR CAMPAIGNS FROM A PUBLICLY SUPPORTED FUND, PROVIDED
4 THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED
5 VOTERS AND THAT THEY ABIDE BY STRICT FUND-RAISING AND
6 SPENDING LIMITS; AS RECOMMENDED BY THE HOUSE SELECT
7 COMMITTEE ON ETHICS AND GOVERNMENTAL REFORM.
8

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** Chapter 163 of the General Statutes is amended by adding a
11 new Article to read:

"Article 22G.

"The North Carolina Legislative Campaigns Pilot Program.

14 **§ 163-278.95. Purpose and establishment of North Carolina Legislative**
15 **Campaigns Pilot Program.**

16 The purpose of this Article is to explore methods to ensure the vitality and fairness
17 of democratic elections in North Carolina, to the end that any eligible citizen of this
18 State can realistically choose to seek and run for public office. It is also the purpose of
19 this Article to explore methods to protect the constitutional rights of voters and
20 candidates from the detrimental effects of increasingly large amounts of money being
21 raised and spent in North Carolina to influence the outcome of elections. It is essential
22 to the public interest that the potential for corruption or the appearance of corruption is
23 minimized and that the equal and meaningful participation of all citizens in the
24 democratic process is ensured. Accordingly, this Article establishes the North Carolina
25 Legislative Campaigns Pilot Fund as an alternative source of campaign financing for
26 candidates for the General Assembly who obtain a sufficient number of qualifying

1 contributions from registered voters and who voluntarily accept strict fund-raising and
2 spending limits. This Article is available to candidates for two seats in the House of
3 Representatives and two seats in the Senate, as selected in G.S. 163-278.97A, in
4 elections to be held in 2008 and thereafter.

5 **"§ 163-278.96. Definitions.**

6 The following definitions apply in this Article:

- 7 (1) Advisory Council. – The Advisory Counsel established in
8 G.S. 163-278.68.
- 9 (2) Board. – The State Board of Elections.
- 10 (3) Campaign-related expenditure. – An expenditure that benefits the
11 candidate's current campaign in accordance with guidelines established
12 by the Board.
- 13 (4) Candidate. – An individual who becomes a candidate as described in
14 G.S. 163-278.6(4). The term includes a political committee authorized
15 by the candidate for that candidate's election.
- 16 (5) Certified candidate. – A candidate for office who chooses to receive
17 campaign funds from the Fund and who is certified under
18 G.S. 163-278.98(c).
- 19 (6) Contested primary and contested general election. – An election in
20 which there are more candidates than the number to be elected.
- 21 (7) Contribution. – Defined in G.S. 163-278.6. A distribution from the
22 Fund pursuant to this Article is not a 'contribution' and is not subject to
23 the limitations of G.S. 163-278.13 or the prohibitions of
24 G.S. 163-278.15 or G.S. 163-278.19.
- 25 (8) Expenditure. – Defined in G.S. 163-278.6.
- 26 (9) Fund. – The North Carolina Legislative Campaigns Pilot Fund
27 established in G.S. 163-278.97.
- 28 (10) Independent expenditure. – Defined in G.S. 163-278.6.
- 29 (11) Nonparticipating candidate. – A candidate for office who is not
30 seeking to be certified under G.S. 163-278.98(c).
- 31 (12) Office. – The two Senate seats and two House of Representatives seats
32 designated pursuant to G.S. 163-278.97A.
- 33 (13) Participating candidate. – A candidate for office who has filed a
34 declaration of intent to participate under G.S. 163-278.98(a).
- 35 (14) Political committee. – Defined in G.S. 163-278.6.
- 36 (15) Qualifying contribution. – A contribution of not less than ten dollars
37 (\$10.00) and not more than one hundred dollars (\$100.00) in the form
38 of a check or money order to the candidate or the candidate's
39 committee that meets both of the following conditions:
 - 40 a. Made by any registered voter who resides in the district in
41 which the candidate seeks office.
 - 42 b. Made only during the qualifying period and obtained with the
43 approval of the candidate or candidate's committee.

1 c. Acknowledged by a written receipt, on a multicopy form
2 approved by the Board, which identifies the complete name,
3 residence address, and county of residence of the contributor
4 and the amount and date of the contribution made; states that
5 the contributor is a registered voter; states that the contributor
6 authorizes the candidate to use the contribution to qualify to
7 receive funds from the Fund; and is signed by the candidate or
8 the candidate's representative.

9 (16) Qualifying period. – The period beginning September 1 of the day
10 before the election and ending on the day of the primary.

11 (17) Trigger for rescue funds. – The dollar amount at which rescue funds
12 are released for certified candidates. In the case of a primary, the
13 trigger equals the maximum amount a participating candidate is
14 permitted by G.S. 163-278.98(b) to raise in qualifying contributions.
15 In the case of a general election, the trigger equals the funding
16 available under G.S. 163-278.99(b)(4).

17 **"§ 163-278.97. Legislative Campaigns Pilot Fund established; sources of funding.**

18 (a) Establishment of Fund. – The North Carolina Legislative Campaigns Pilot
19 Fund is established to finance the election campaigns of certified candidates for office
20 and to pay administrative and enforcement costs of the Board related to this Article. The
21 Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by
22 the Fund is credited to the Fund. The Board shall administer the Fund.

23 (b) Sources of Funding. – Money received from all the following sources must be
24 deposited in the Fund:

25 (1) Unspent Fund revenues distributed for an election that remain unspent
26 or uncommitted at the time the recipient is no longer a certified
27 candidate in the election.

28 (2) Voluntary donations made directly to the Fund.

29 (3) Appropriations by the General Assembly.

30 (c) Determination of Fund Amount. – By April 1, 2007, and every two years
31 thereafter, the Board, in conjunction with the Advisory Council, shall prepare and
32 provide to the Joint Legislative Commission on Governmental Operations of the
33 General Assembly a report documenting, evaluating, and making recommendations
34 relating to the administration, implementation, and enforcement of this Article. In its
35 report, the Board shall set out the funds received to date and the expected needs of the
36 Fund during the next election cycle.

37 **"§ 163-278.97A. Selection of districts for pilot program.**

38 Four districts shall be selected for the pilot program every two years as follows:

39 (1) The majority and minority leaders of the Senate shall each select a
40 different district in the Senate from a list of districts in which the
41 candidates have volunteered to participate.

42 (2) The majority and minority leaders of the House of Representatives
43 shall each select a different district in the House from a list of districts
44 in which the candidates have volunteered to participate.

1 Those leaders report their selections to the Executive Director of the State Board of
2 Elections no later than August 1 of the year before the election. If any one of the leaders
3 fails to report a selection by August 1, the State Board of Elections by August 10 shall
4 make the selection that leader was authorized to make.

5 **"§ 163-278.98. Requirements for participation.**

6 (a) Declaration of Intent to Participate. – Any individual choosing to receive
7 campaign funds from the Fund shall first file with the Board a declaration of intent to
8 participate in the act as a candidate for a stated office. The declaration of intent shall be
9 filed before or during the qualifying period and before collecting any qualifying
10 contributions. In the declaration, the candidate shall swear or affirm that only one
11 political committee, identified with its treasurer, shall handle all contributions,
12 campaign-related expenditures, and obligations for the participating candidate and that
13 the candidate will comply with the contribution and expenditure limits set forth in
14 subsection (e) of this section and all other requirements set forth in this Article or
15 adopted by the Board. Failure to comply is a violation of this Article.

16 (b) Demonstration of Support of Candidacy. – Participating candidates who seek
17 certification to receive campaign funds from the Fund shall first, during the qualifying
18 period, obtain qualifying contributions from at least 300 registered voters in the case of
19 a Senate candidate and at least 150 registered voters in the case of a House candidate in
20 an aggregate sum that at least equals six thousand dollars (\$6,000) in the case of a
21 Senate candidate and three thousand dollars (\$3,000) in the case of a House candidate,
22 but that does not exceed forty thousand dollars (\$40,000) in the case of a Senate
23 candidate and twenty-five thousand dollars (\$25,000) in the case of a House candidate.

24 (c) Certification of Candidates. – Upon receipt of a submittal of the record of
25 demonstrated support by a participating candidate, the Board shall determine whether or
26 not the candidate has complied with all the following requirements:

- 27 (1) Signed and filed a declaration of intent to participate in this Article.
- 28 (2) Submitted a report itemizing the appropriate number of qualifying
29 contributions received from registered voters, which the Board shall
30 verify through a random sample or other means it adopts. The report
31 shall include the county of residence of each registered voter listed.
- 32 (3) Filed a valid notice of candidacy pursuant to this Chapter.
- 33 (4) Otherwise met the requirements for participation in this Article.

34 The Board shall certify candidates complying with the requirements of this section
35 as soon as possible and no later than five business days after receipt of a satisfactory
36 record of demonstrated support.

37 (d) Final Report for Qualifying Contributions. – No later than five business days
38 after the end of the qualifying period, all participating candidates shall submit a report
39 to the Board of all previously unreported qualifying contributions, together with copies
40 of the contribution forms described in G.S. 163-278.96(15), in accordance with
41 procedures developed by the Board. Within seven business days after submittal of the
42 final report, the Board shall determine, through a random audit or other means it adopts,
43 whether the contributions abide by the definition of qualifying contributions, whether
44 they must be returned to the donor, and whether they exceed the maximum amount of

1 qualifying contributions.

2 (e) Restrictions on Contributions and Expenditures for Participating and Certified
3 Candidates. – The following restrictions shall apply to contributions and expenditures
4 with respect to participating and certified candidates:

5 (1) Beginning January 1 of the year before the election and before the
6 filing of a declaration of intent, a candidate for office may accept in
7 contributions up to five thousand dollars (\$5,000) from sources and in
8 amounts permitted by Article 22A of this Chapter and may expend up
9 to five thousand dollars (\$5,000) for any campaign purpose related to
10 the upcoming election. A candidate who exceeds either of these limits
11 shall be ineligible to file a declaration of intent or receive funds from
12 the Public Campaign Fund.

13 (2) From the filing of a declaration of intent through the end of the
14 qualifying period, a candidate may accept only qualifying
15 contributions, contributions under ten dollars (\$10.00) from voters
16 residing in the candidate's district, and personal and family
17 contributions permitted under subdivision (4) of this subsection. The
18 total contributions the candidate may accept during this period shall
19 not exceed the maximum qualifying contributions for that candidate.
20 In addition to these contributions, the candidate may only expend
21 during this period the remaining money raised pursuant to subdivision
22 (1) of this subsection and possible rescue funds received pursuant to
23 G.S. 163-278.101.

24 (3) After the qualifying period and through the date of the general
25 election, the candidate shall expend only the funds the candidate
26 receives from the Fund pursuant to G.S. 163-278.99(b)(4) plus any
27 funds remaining from the qualifying period and possible rescue funds.
28 In addition, during that period a candidate may accept in-kind
29 contributions from political party executive committees, up to an
30 aggregate value of ten percent (10%) of the amount the candidate is
31 entitled to receive under G.S. 163-278.99(b)(4).

32 (4) During the qualifying period, the candidate may contribute up to one
33 thousand dollars (\$1,000) of that candidate's own money to the
34 campaign. Debt incurred by the candidate for a campaign expenditure
35 shall count toward that limit. During the qualifying period, the
36 candidate may accept in contributions up to one thousand dollars
37 (\$1,000) from each member of that candidate's family consisting of
38 spouse, parent, child, brother, and sister, as long as the candidate
39 accepts no more than two thousand dollars (\$2,000) from all those
40 family members combined.

41 (5) A candidate and the candidate's committee shall limit the use of all
42 revenues permitted by this subsection to expenditures for
43 campaign-related purposes only related to the upcoming election. The
44 Board shall publish guidelines outlining permissible campaign-related

1 expenditures. In establishing those guidelines, the Board shall
2 differentiate expenditures that reasonably further a candidate's
3 campaign from expenditures for personal use that would be incurred in
4 the absence of the candidacy. In establishing the guidelines, the Board
5 shall review relevant provisions of G.S. 163-278.42(e), the Federal
6 Election Campaign Act, and rules adopted pursuant to it, and similar
7 provisions in other states.

8 (6) Any contribution received by a participating or certified candidate that
9 falls outside that permitted by this subsection shall be returned to the
10 donor as soon as practicable. Contributions intentionally made,
11 solicited, or accepted in violation of this Article are subject to civil
12 penalties as specified in G.S. 163-278.70. The funds involved shall be
13 forfeited to the Civil Penalty and Forfeiture Fund.

14 (7) A candidate shall return to the Fund any amount distributed for an
15 election that is unspent and uncommitted at the date of the election, or
16 at the time the individual ceases to be a certified candidate, whichever
17 occurs first. For accounting purposes, all qualifying, personal, and
18 family contributions shall be considered spent before revenue from the
19 Fund is spent or committed.

20 (f) Revocation. – A candidate may revoke, in writing to the Board, a decision to
21 participate in the Fund at anytime. After a revocation, that candidate may accept and
22 expend outside the limits of this Article without violating this Article. Within 10 days
23 after revocation, a candidate shall return to the Board all money received from the Fund.

24 **"§ 163-278.99. Distribution from the Fund.**

25 (a) Timing of Fund Distribution. – The Board shall distribute to a certified
26 candidate revenue from the Fund in an amount determined under subdivision (b)(4) of
27 this section within five business days after the certified candidate's name is approved to
28 appear on the ballot in a contested general election, but no earlier than five business
29 days after the primary.

30 (b) Amount of Fund Distribution. – By August 1, 2007, and no less frequently
31 than every two years thereafter, the Board shall determine the amount of funds, rounded
32 to the nearest one hundred dollars (\$100.00), to be distributed to certified candidates as
33 follows:

34 (1) Uncontested primaries. – No funds shall be distributed.

35 (2) Contested primaries. – No funds shall be distributed except as
36 provided in G.S. 163-278.101.

37 (3) Uncontested general elections. – No funds shall be distributed.

38 (4) Contested general elections. – Funds shall be distributed to a certified
39 candidate for the Senate in an amount equal to the median amount of
40 campaign-related expenditures made by all major party candidates
41 who reported campaign expenditures for contested general election
42 racers for the Senate for the immediately preceding two general
43 elections, but not less than seventy-five thousand dollars (\$75,000).
44 Funds shall be distributed to a certified candidate for the House in an

1 amount equal to the median amount of campaign-related expenditures
2 made by all major party candidates who reported campaign
3 expenditures for contested general election races for the House for the
4 immediately preceding two general elections, but not less than fifty
5 thousand dollars (\$50,000).

6 (c) Method of Fund Distribution. – The Board, in consultation with the State
7 Treasurer and the State Controller, shall develop a rapid, reliable method of conveying
8 funds to certified candidates. In all cases, the Board shall distribute funds to certified
9 candidates in a manner that is expeditious, ensures accountability, and safeguards the
10 integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified
11 candidates, then the available money shall be distributed proportionally, according to
12 each candidate's eligible funding, and the candidate may raise additional money in the
13 same manner as a noncertified candidate for the same office up to the unfunded amount
14 of the candidate's eligible funding.

15 **"§ 163-278.100. Reporting requirements.**

16 (a) Reporting by Noncertified Candidates and Independent Expenditure
17 Entities. –

18 Any noncertified candidate with a certified opponent shall report total income,
19 expenses, and obligations to the Board by facsimile machine or electronically within 24
20 hours after the total amount of campaign expenditures or obligations made, or funds
21 raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as
22 defined in G.S. 163-278.96(17). Any entity making independent expenditures in support
23 of or opposition to a certified candidate or in support of a candidate opposing a certified
24 candidate, or paying for electioneering communications, as defined in G.S. 163-278.80
25 or G.S. 163-278.90, that refer to one of those candidates, shall report the total funds
26 received, spent, or obligated for those expenditures or electioneering communications to
27 the Board by facsimile machine or electronically within 24 hours after the total amount
28 of expenditures or obligations made, or funds raised or borrowed, for the purpose of
29 making the independent expenditures or electioneering communications, exceeds three
30 thousand dollars (\$3,000). After this 24-hour filing, the noncertified candidate or
31 independent expenditure or electioneering communications entity shall comply with an
32 expedited reporting schedule by filing additional reports after receiving each additional
33 amount in excess of one thousand dollars (\$1,000) or after making or obligating to make
34 each additional expenditure(s) in excess of one thousand dollars (\$1,000). The schedule
35 and forms for reports required by this subsection shall be made according to procedures
36 developed by the Board.

37 (b) Reporting by Participating and Certified Candidates. – Notwithstanding other
38 provisions of law, participating and certified candidates shall report any money
39 received, including all previously unreported qualifying contributions, all campaign
40 expenditures, obligations, and related activities to the Board according to procedures
41 developed by the Board. A certified candidate who ceases to be certified or ceases to be
42 a candidate or who loses an election shall file a final report with the Board and return
43 any unspent revenues received from the Fund. In developing these procedures, the
44 Board shall utilize existing campaign reporting procedures whenever practical.

1 (c) Timely Access to Reports. – The Board shall ensure prompt public access to
2 the reports received in accordance with this Article. The Board may utilize electronic
3 means of reporting and storing information.

4 **"§ 163-278.101. Rescue funds.**

5 (a) When Rescue Funds Become Available. – When any report or group of
6 reports shows that 'funds in opposition to a certified candidate or in support of an
7 opponent to that candidate' as described in this section, exceed the trigger for rescue
8 funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that
9 certified candidate an additional amount equal to the reported excess within the limits
10 set forth in this section. 'Funds in opposition to a certified candidate or in support of an
11 opponent to that candidate' shall be equal to the sum of the following:

12 (1) Campaign expenditures or obligations made, or funds raised or
13 borrowed, whichever is greater, reported by any one uncertified
14 opponent of a certified candidate. Where a certified candidate has
15 more than one uncertified opponent, the measure shall be taken from
16 the uncertified candidate showing the highest relevant dollar amount.

17 (2) The sum of all expenditures and electioneering communications
18 reported in accordance with G.S. 163-278.100(a) of entities making
19 independent expenditures in opposition to the certified candidate or in
20 support of any opponent of that certified candidate.

21 (b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a
22 certified candidate in a contested primary shall be limited to an amount equal to two
23 times the maximum qualifying contributions.

24 (c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to
25 a certified candidate in a contested general election shall be limited to an amount equal
26 to two times the amount described in G.S. 163-278.99(b)(4).

27 **"§ 163-278.102. Unaffiliated and new-party candidates.**

28 Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates
29 certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the
30 same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated
31 candidates and new-party candidates not certified to appear on the ballot by noon on the
32 last business day in February, the deadline for seeking certification to receive revenue
33 from the Fund is noon on the first business day of July of the election year.

34 **"§ 163-278.103. Enforcement by the Board; civil penalty.**

35 The Board, with the advice of the Advisory Council, shall administer the provisions
36 of this Article in the same manner as described in Article 22D of this Chapter. In
37 addition to any other penalties that may be applicable, any individual, political
38 committee, or other entity that violates any provision of this Article is subject to a civil
39 penalty in the same manner as described in Article 22D of this Chapter."

40 **SECTION 2.** G.S. 163-278.13(e) reads as rewritten:

41 "(e) ~~This~~ Except as provided in subsections (e2) and (e3) of this section, this
42 section shall not apply to any national, State, district or county executive committee of
43 any political party. For the purposes of this section only, the term "political party"
44 means only those political parties officially recognized under G.S. 163-96."

1 **SECTION 3.** G.S. 163-278.13 is amended by adding a new subsection to
2 read:

3 "(e3) In order to make meaningful the provisions of the North Carolina Legislative
4 Campaigns Pilot Program, as set forth in Article 22G of this Chapter, no candidate for
5 any office that is in that current election subject to the provisions of Article 22G of this
6 Chapter shall accept, and no contributor shall make to that candidate, a contribution
7 during the period beginning 21 days before the day of the general election and ending
8 the day after the general election if that contribution causes the candidate to exceed the
9 "trigger for rescue funds" defined in G.S. 163-278.96(17). The prohibitions in this
10 subsection shall also apply to a political committee the principal purpose of which is to
11 support a candidate for those offices. Nothing in this subsection shall prohibit a
12 candidate from making a contribution or loan secured entirely by that candidate's assets
13 to that candidate's own campaign or to a political committee the principal purpose of
14 which is to support that candidate's campaign. This subsection applies with respect to a
15 candidate only if both of the following statements are true regarding that candidate:

16 (1) That candidate is opposed in the general election by a certified
17 candidate as defined in Article 22G of this Chapter.

18 (2) That certified candidate has not received the maximum rescue funds
19 available under G.S. 163-278.101(c).

20 The recipient of a contribution that apparently violates this subsection has three days
21 to return the contribution or file a detailed statement with the State Board of Elections
22 explaining why the contribution does not violate this subsection."

23 **SECTION 4.** The provisions of this act are severable. If any provision of
24 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
25 other provisions of this act that can be given effect without the invalid provision.

26 **SECTION 5.** This act applies to elections for the seats representing two
27 districts in the House of Representatives and two districts in the Senate selected in
28 accordance with G.S. 163-278.97A, as enacted by Section 1 of this act in, 2008 and
29 thereafter. Section 5 of this act becomes effective July 1, 2006. The remainder of this
30 act is effective when it becomes law.